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No. ——

In The
Supreme Court of the United States

WENDY JANE TITELMAN,
Petitioner,

v.

ANDREW CHARLES TITELMAN,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Georgia

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does a court's decision to sever all contact between a parent and her children for a period of five years without notice and an opportunity to be heard violate the Due Process clause of the Fourteenth and Fifth Amendments?

2. Does a state court's custody decision that deprives a parent of all access to her children indefinitely, without a finding of unfitness by clear and convincing evidence, effectively terminate a party's parental rights in violation of the Fifth and Fourteenth Amendments of the Constitution?

3. Does the requirement by a lower court of a prohibitive monetary bond to be paid by an indigent parent as a prerequisite to being heard in court regarding visitation rights to her children violate the Fourteenth Amendment rights to procedural due process and equal protection?

4. Does a court violate the First, Fifth and Fourteenth Amendments when it deprives a parent of custody, visitation, or contact with her children for taking reasonable action based upon a belief, supported by facts, that her children need protection from abuse?

LIST OF PARTIES

1. Wendy Jane Titelman, Plaintiff and Petitioner

2. Andrew Charles Titelman, Defendant and Respondent

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PETITION FOR A WRIT OF CERTIORIARI

PRAYER FOR RELIEF FROM OPINIONS BELOW

Petitioner, Wendy Titelman, prays that this Court grant a Writ of Certiorari to review the decision of the Georgia Supreme Court which, by its refusal to review this case, affirmed the trial court's holding that, before the court would consider allowing Petitioner visitation with her children, she would have to post a $500,000 bond and meet other monetary requirements. Additionally, Mrs. Titelman asks that this Court review the decision of the trial court (and the state Supreme Court's refusal to review the decision) which effectively terminated Petitioner's parental rights without notice, opportunity to be heard, and without a finding of clear and convincing evidence of unfitness or harm to the children.

OPINIONS BELOW

The trial court's final order was entered on January 30, 2006 (App., 12a-17a). The denial of review by the Supreme Court was entered on February 5, 2007 (App., 1a). A Motion for Reconsideration was filed by Petitioner February 14, 2007 (App., 2a-10a) and was denied April 10, 2007 (App., 11a). The orders of the Supreme Court of Georgia are unreported.

JURISDICTION

The opinion of the Supreme Court of Georgia was entered on February 5, 2007 (App., 1a). A Motion for Reconsideration was filed on February 14, 2007 (App., 2a-10a), and the final judgment of the Supreme Court of Georgia was entered on April 10, 2007 (App., 11a). On July 5, 2007 Justice Thomas extended the time within

which to file a petition for a writ of certiorari to and including September 7, 2007 (App., 33a-34a). This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> No State shall . . . deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . .

The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall be . . . subject for the same offense to be twice put in jeopardy of life or limb; . . . nor be deprived of life, liberty, or property, without due process of law. . . .

The First Amendment to the United States Constitution provides in relevant part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The relevant provision of the Termination of Parental Rights Statute, *O.C.G.A. § 15-11-94*, is reproduced at App., 39a-42a.

The relevant provision of the Parental Power Statute, *O.C.G.A. § 19-7-1 (2007)*, is reproduced at App., 43a-46a.

STATEMENT OF THE CASE

INTRODUCTION

Petitioner, Wendy Jane Titelman lost custody of her children, Alexandra and Jennifer Titelman, now ages 15 and 13 respectively, on February 18, 2000 during a hearing for which she had less than one day's notice. On September 20, 2000, Mrs. Titelman lost all visitation rights with her daughters, in an *ex parte* hearing at which the court was aware that she was physically unable to attend.

The orders resulting from these two hearings (App., 18a-22a) awarded custody to the children's father, the Respondent, Andrew Titelman, despite credible evidence of his sexual abuse of the children. Mrs. Titelman has not seen or spoken to her children since.

Therefore, the relationship between a mother and her two natural daughters has been totally severed by orders of the Superior Court of Cobb County Georgia. Under the order of September 20, 2000, (App., 18a-19a) Mrs. Titelman has not been allowed any contact or communication with her daughters for over seven years. This earlier order was incorporated into a final order on January 30, 2006, following a hearing on December 19, 2005 (App., 12a-17a). The final order required Mrs. Titelman to produce prohibitive amounts of money as "bond" before she would be permitted to petition the court for further

consideration of her rights to see her children (App., 14a-15a).

Mrs. Titelman moved to Mississippi in August of 2000 following her divorce from the Respondent. Her daughters had begun to disclose that the Respondent was sexually molesting them prior to the divorce proceedings. Soon after locating to Mississippi, and following another disclosure of abuse by the children, Mrs. Titelman, through counsel, and following a forensic interview of the children by a licensed, clinical psychologist, sought protection for her daughters from the Harrison County, Mississippi Chancery Court.

The Mississippi Court entered an order assuming emergency jurisdiction over the case and gave protection to the children. Several persons related to the Georgia case then traveled to Mississippi and obtained an order in which the court in Mississippi relinquished jurisdiction over the matter and the children were taken back to Georgia (App., 23a-24a). Mrs. Titelman was promptly arrested on a federal warrant issued from Georgia. The federal warrant was dismissed, but Mrs. Titelman was later re-arrested on Georgia state charges. She was tried and acquitted.

However, the Cobb County Superior Court which was presiding over the divorce and custody matters "punished" Mrs. Titelman by severing all contact with her daughters through an order entered *ex parte*, in September of 2000. The matter stayed pending in the court over five years, during which time Mrs. Titelman had no communication whatsoever with Alexandra and Jennifer, who remained in the sole custody of the man they had accused of sexual abuse.

Despite Mrs. Titelman's numerous attempts to have the matter heard, it only came before the Court for a full hearing, on December 19, 2005, five years later. The Court then entered an order on January 30, 2006 in which it ordered that Mrs. Titelman deposit $10,000.00 into the registry of the Court and post a $500,000.00 bond with the Court. Failure by Mrs. Titelman to comply with these and other requirements within ninety days would result in a final order denying all communication between the children and their mother, which would effectively terminate her parental rights (App., 14a-15a).

Mrs. Titelman argued at the December 19, 2005 hearing that the findings of the Court violated her rights to Due Process (App., 47a-62a). Additionally, the Petitioner argued, through counsel to the Georgia Supreme Court in a motion for reconsideration of the denial of her appeal, that the order constituted a *de facto* termination of her parental rights in violation of the Fourteenth Amendment of the U.S. Constitution (App., 2a-10a).

THE DIVORCE PROCEEDINGS

This litigation arises out of a divorce and custody case during which the minor children made allegations that their father, Andrew Titelman, was sexually abusing them. The children described to several professionals, in graphic detail, various incidents of sexual assault allegedly perpetrated on them by their father, the Respondent.

Andrew and Wendy Titelman were married in April 1991. Alexandra was born on May 26, 1992, and Jennifer was born on March 30, 1994. Mrs. Titelman was a stay at home mother and the primary caretaker of the children from birth, and the children had a very close and loving bond with Mrs. Titelman. The marriage was tumultuous and marked by domestic violence.

The Respondent filed for divorce in July 1998. During the course of the litigation, in March of 1999, and upon the request of the Respondent, a guardian *ad litem*, attorney Diane Woods [hereinafter "the GAL".], was appointed to act on behalf of the children. Allegations of sexual abuse of Alexandra and Jennifer, by their father, the Respondent, arose during the litigation. As a result of the abuse allegations, the GAL., recommended that her good friend, psychologist Elizabeth King, become involved in the case as a court appointed evaluator.

The two professionals, King and Woods, decided not to perform forensic interviews of the children to determine whether the Respondent was sexually molesting them. However, the children continued to make credible allegations and to report abuse to reputable mental health professionals.

Mrs. Titelman and Respondent lived together in their marital home until May 1999 when the house was sold and they moved to separate homes, thereby necessitating a temporary custody arrangement. At this time, Woods submitted her report to the Court recommending that Respondent have full custody of the children and that Wendy Titelman have limited visitation because of the GAL's fear that Mrs. Titelman would "alienate" the children from their father.

This recommendation was made despite reports by professionals with expertise in child sexual abuse expressing concern that the children were being sexually abused or being set up for abuse. An order was entered reflecting a temporary shared custody agreement under which the parties would rotate visitation weekly.

Soon thereafter, Alexandra disclosed abuse by the Respondent to Lynn Brentnall, PhD, a professional who was conducting cognitive testing of the girls. Dr. Brentnall made a report to the Department of Family and Children Services (App., 77a), and an investigation was initiated. A social worker and a detective with the Kennesaw Police Department conducted a videotaped interview of Alexandra on June 23, 1999. For a time, both the Petitioner and Respondent's visitation with the children was supervised.

In August, 1999, unsupervised visitation by both parents was resumed by court order. Soon thereafter, in September of 1999, Dr. Diane Pearce, a child abuse specialist who was seeing the children at the request of Dr. Brentnall, became convinced that serious abuse was occurring. Consequently, she reported to the Department of Family and Children Services. When there was no response, she repeatedly called and then wrote a letter of concern to the director requesting immediate action. (App., 78a-79a, excerpt from a letter to Adrienne McFall, Esq. regarding this report). Finally, an investigation was opened.

On October 21, 1999, almost three months after Dr. King was appointed to the case, and after two psychologists and several family friends had reported their belief that the children were being abused, she began interviews with the children. GAL Woods wrote a letter ordering that Petitioner may not take the children to anyone other than Dr. King, including the police, social workers, or anyone else regarding allegations of abuse.

In February 2000, Petitioner was notified by phone that an emergency hearing was scheduled for the following day, February 18, 2000. No pleading notifying Mrs. Titelman of the nature of the hearing was filed. One

hour prior to the hearing, Mrs. Titelman was given a 26 page "Custodial Evaluation Report" and a videotape produced by Respondent, Andrew Titelman.

At the hearing Dr. King testified that the videotape produced by Mr. Titelman, wherein the girls recant the allegations of abuse, proved that no abuse occurred and that Petitioner was mentally ill because she believed the children's previous disclosures.[1] Dr. King states in her Custodial Evaluation Report, "The issue of parental alienation must be a concern. Alex meets 6 of the 8 criteria and Jenny meets 7 of the 8 for Gardner's parental alienation syndrome."[2] King also found that Mrs. Titelman was suffering from a disorder she characterized as "Snow White Syndrome." Further, King opined that Mrs. Titelman was "implanting or reinforcing false memories" that created problems "with regard to parental alienation." As a result, King recommended that Respondent have full

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[1] This video and the videotape made by the Department of Family and Children Services were never seen by the court. Kathleen Coulborn Faller, PhD, with the University of Michigan, School of Social Work later made a thorough and competent review of these tapes. In her opinion reported December 11, 2001, she concluded that "it is more likely than not that A.T. was sexually abused in a manner similar to what she described" during her forensic interview, and that the Andy Titelman produced video "appears to be a browbeating session," "the father speaks in a loud and threatening voice," and "he essentially insists his daughters say that they lied when they said he touched them in a sexual way."

[2] "Richard Gardner's theory positing the existence of 'parental alienation syndrome' or 'PAS' has been discredited by the scientific community. Testimony that a party to a custody case suffers from the syndrome should therefore be ruled inadmissible both under the standards established in *Daubert* and the stricter *Frye* standard." National Council of Juvenile and Family Court Judges and the State Court Institute, Navigating Custody and Visitation Evaluations in Cases With Domestic Violence: A Judge's Guide, 19 (2004, rev. 2006) developed under grant number SJI-03-N-103 from the State Justice Institute.

custody of the children and that Mrs. Titelman's visitation be supervised. It was at this hearing, for which no notice was provided, that Mrs. Titelman lost custody of her daughters. The Court ordered that she have supervised visitation. Mrs. Titelman never regained custody of her children.

From March 2000 through June 2000 Mrs. Titelman paid approximately $2,000.00 per month to see her daughters 12 hours a week under supervision by A-Plus Agency per Ms. Woods and Dr. King's recommendations. Alexandra and Jennifer sometimes arrived at the visits upset and told the supervisors that their father was hurting them and was sexually abusing them.

The divorce trial was held June 28-30, 2000 and an order was entered on August 4, 2000. Andrew Titelman was awarded sole custody of the two young girls, despite abundant evidence that Mr. Titelman was sexually molesting his daughters. Mrs. Titelman was given visitation with her daughters every other weekend.

Shortly after the August 4, 2000 custody order, Mrs. Titelman moved to the Mississippi Gulf coast. The children visited with her over the Labor Day weekend. During that weekend, the girls disclosed that the Respondent came to their beds at night and rubbed their genital areas. As a result of these disclosures, Dr. Donald Matherne, a Mississippi psychologist who specializes in child sexual abuse, conducted a forensic interview with the children. Consequently, the Harrison County, Mississippi Chancery Court placed Jennifer and Alexandra into protective custody upon a review of Dr. Matherne's report (App., 80a-86a).

On September 15, 2000 the Mississippi Court held a hearing. Andrew Titelman, the GAL, and psychologist

Elizabeth King attended the hearing and made representations to the Mississippi Court that, if it returned the children to Georgia, the sexual abuse allegations would be fully investigated in Cobb County Georgia and the children would be protected. The Mississippi Court released the children to the custody of the GAL.

However, immediately after the Mississippi Court hearing, Mrs. Titelman was arrested on an Unlawful Flight to Avoid Prosecution warrant and jailed in Mississippi. The warrant was issued despite no pending prosecution by Georgia or any other authorities. Mrs. Titelman was later prosecuted for "Interstate Interference with Custody" under *O.C.G.A. §16-5-45(c)(2)* in the Cobb County, Georgia Superior Court (Case No. 00-9-4681-40). After a week long trial, the jury promptly acquitted Mrs. Titelman April 30, 2001.

On September 20, 2000 the Georgia Superior Court held an *ex parte* hearing on Respondent's pleadings alleging that Mrs. Titelman kidnapped the children. Mrs. Titelman was not notified of the hearing or served with pleadings, but learned of it one day before it occurred. She was released from jail the night before, September 19th, in Mississippi and could not physically attend the proceedings. She requested a continuance by faxed letter, citing lack of notice. The request was denied. (App., 63a – 67a).

Pursuant to the *ex parte* hearing, the Court issued a temporary order eliminating all personal or telephone contact between Mrs. Titelman and her daughters. The order also prevented Mrs. Titelman and her family from coming within 3,000 yards of the girls. The order (App., 18a-19a) remains in place today. Mrs. Titelman did not receive an evidentiary hearing for over five years.

Two weeks later, on or about October 4, 2000, a hearing was held before Superior Court Judge James Bodiford on Respondent's contempt application, which was based on the events in Mississippi. During the hearing, counsel for Mrs. Titelman challenged the September 20, 2000 order. The Court concluded that it would hold a hearing on the continued efficacy of the September 20, 2000 order at a later date. In the interim, the Court accepted an agreement among the parties that Mrs. Titelman would have no contact with her children for "at least two weeks," characterized as a "gentleman's agreement," (App., 68a-72a, excerpted transcript October 4 hearing, pg. 61) thereby effectively keeping the terms of the September 20th order in effect in the interim.

After that two-week period, Mrs. Titelman repeatedly sought a hearing to rectify the deprivation of her parental rights, including requests made through counsel for dismissal of the September 20, 2000 order, all of which the court rejected. Hearings were continued for various reasons outside the control of the Petitioner.[3] Almost two years later there was still no hearing scheduled. On July 17, 2003, more than two and a half years after Mrs. Titelman last had access to her children, she filed a Motion to Vacate and Dissolve Restraining Order Dated September 20, 2000. The Court took no action on Mrs. Titelman's motion. Mrs. Titelman is not aware of any order directly addressing the merits of her Motion to Vacate and Dissolve Restraining Order dated September 20, 2000.

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[3] Two hearings, November 2000 and January 2001, had been scheduled and then were continued as a result of counsel's husband's illness and death. Also, Mrs. Titelman became a refuge due to Hurricane Katrina.

Between September 2000 to December 2005, in addition to seeking a hearing on the merits of the restraining order preventing her contact with her children, Mrs. Titelman made repeated attempts to have the abuse allegations heard in the Cobb County Juvenile Court. Under Georgia law, the juvenile court has exclusive, original jurisdiction over matters of abuse of minor children. *O.C.G.A. § 15-11-28(1)(C)(2007).* Mrs. Titelman was never able to get a hearing on the merits of the allegations in juvenile court.

Initially, the Cobb County Juvenile Court refused to accept for filing a petition brought by numerous citizens alleging the children were victims of abuse. The refusal was appealed and upon remand the court allowed the filing of the petition, but promptly dismissed it as a "disguised custody" matter. *Titelman v. Stedman*, 277 Ga. 460, 461-462 (591 SE2d 774) (2003). (App. 25a-32a)

Despite all her efforts, Mrs. Titelman never succeeded in obtaining a review of her case on the merits.

THE CRIMINAL TRIAL

Mrs. Titelman was tried in criminal court on the charges for "Interstate Interference with Custody" before the Honorable Robert E. Flournoy, III and a Cobb County Georgia jury on April 23-27, 2001. She was acquitted after a very short jury deliberation. The jurors took an unusual and extraordinary step of writing a letter to District Attorney Patrick Head and Judge James Bodiford, the judge presiding over the custody case, calling the prosecution an inexcusable "cover-up" of the State of Georgia's malfeasance and failure to protect the children (App., 73a-76a).

The letter was presented by Jury Foreperson Bryan Wilson and states, in part:

> We were perplexed as to why our state would pursue such a case so diligently when there were obvious errors in the indictment and credible reports indicating sexual and emotional abuse to two small children and the prosecution of the mother who sought to protect them from harm's way. Id

THE FINAL VISITATION ORDER

The Superior Court did not conduct a final hearing on Respondent's contempt and visitation pleadings until December 19, 2005, and did not enter an order thereon until January 30, 2006. The January 30, 2006 order states, in pertinent part, that "this Court's Order on Plaintiff's October 11, 2000 Application for Contempt and Petition for Modification of Visitation shall govern custody and visitation of [Appellant's children]." The order does not find Petitioner "unfit" nor detail any clear and convincing evidence to support the complete prohibition of contact between Mrs. Titelman and her children (App., 12a-17a).

From September 20, 2000 through January 30, 2006, the court denied Mrs. Titelman due process of law and, based entirely on an *ex parte* hearing, stripped Mrs. Titelman of a fundamental right – access to her natural children. The January 30, 2006 order placed an impossible monetary burden on Mrs. Titelman and severed her relationship with her children (App., 12a-17a).

On January 30, 2006, the September 20, 2000 *ex parte* order was made permanent when Mrs. Titelman was found to be in "willful contempt" of court for the very same action which she was criminally prosecuted and

found "not guilty" by a jury of her peers in April 2001. As punishment, the court ordered that Mrs. Titelman and all members of her family "are enjoined and prohibited from communicating in any manner with the Children, being within 3,000 yards of the Children, or directing any third party to communicate or physically approach the Children."

Mrs. Titelman was further punished with a fine of $24,384.15, and she was ordered to pay into the registry of the Court the sum of TEN THOUSAND DOLLARS ($10,000.00) and obtain a cash bond in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) within 90 days. Only then would the Court "entertain" a hearing on the appointment of a guardian *ad litem* (GAL), and,

> [S]hould the Court appoint a GAL, the Court will enter an Order specifying the role and duties of the GAL; Defendant's $10,000.00 deposit into the registry of the Court and the $500,000.00 bond shall, (a) serve to satisfy attorney's fees and costs of litigation associated with any legal proceedings brought against the GAL by any person or entity in any court or tribunal of any jurisdiction, including disciplinary proceedings before any State Bar, associated with his or her duties as GAL of the Children, and (b) serve to satisfy any orders or judgments rendered against Defendant subsequent to entry of this Order, including but not limited to monetary judgments in favor of Plaintiff.

Furthermore, the Court ordered that should Mrs. Titelman fail to deposit $10,000.00 into the registry of the Court and/or fail to obtain the $500,000.00 bond on or before the expiration of ninety (90) days from December 19, 2005 then the custody and visitation provisions given shall become the final order of the Court. This order

deprived Mrs. Titelman of her procedural due process and equal protection rights and constitutes a *de facto* termination of her parental rights by denying her the fundamental right to parent or even have a relationship with her children. (App., 12a-17a).

The petitioner timely appealed all orders related to the December 19, 2005 hearing to the Georgia State Supreme Court.

THE APPEAL

The appeals were dismissed by the Supreme Court of Georgia on February 5, 2007 (App., 8a). A Motion for Reconsideration was filed by Petitioner February 14, 2007 (App., 2a-10a), and was denied April 10, 2007 (App., 11a).

Therefore, this Court is the only Court which may grant Mrs. Titelman relief from the order by the Cobb County Superior Court. On July 5, 2007, Justice Thomas extended the time within which to file a petition for a writ of certiorari in the United States Supreme Court, to and including September 7, 2007 (App., 33a-34a). Mrs. Titelman timely petitions this Court for a Writ of Certiorari.

REASONS CERTIORARI SHOULD BE GRANTED

The due process violations described in this case and amplified in the briefs of Amici Curiae, are painfully widespread among family courts across the country. Not only do family courts routinely deprive litigants of fair process in adjudicating their parental rights, state courts of appeal all too often, as did this court, fail to directly address and rectify these violations. As a result, it is necessary for this Court to review a case such as this to identify and vindicate these fundamental violations of basic rights of due process and rights to parent. Such

vindication would affirm that this Court's due process jurisprudence regarding both procedural fairness and the right to parent applies to private custody litigation, an arena which this Court has very rarely addressed, and which is sorely in need of such attention.

A grant of certiorari is also critically needed to establish that it is possible for a custody/visitation decision to be so extreme as to be the functional equivalent of a termination of parental rights. Although "loss of custody" is normally not comparable to parental termination, because it does not "sever the parent-child bond," *M.L.B. v. S.L.J.*, 519 U.S. 102, 121 (1996), in a case like this, where a mother is cut off from all contact with the children, the adjudication does "sever the parent-child bond" and is no different from parental termination in its impact and its import.

The decisions of this Court, which these family court practices implicate, include (i) *M.L.B. v. S.L.J.*, 519 U.S. 102, (1996) (denial of fee waiver for transcripts for appeal of parental termination violates due process) and *Boddie v. Connecticut*, 401 U.S. 371, (1971) (requiring state courts to provide fee waivers for indigent litigants seeking a divorce); this principle should, apply equally to indigent custody litigants seeking access to their own children; (ii) *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (fundamental right to raise children); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (same); *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (same); and (iii) *Stanley v Illnois*, 405 U.S. 645 (1972) and its progeny, establishing rights to notice and a hearing before an unmarried father can be deprived of parental rights; this principle surely applies to a mother being deprived of all access to her children in custody litigation.

I. The Denial of All Access to Her Children Without Adequate Notice or any Hearing for Five Years Violated Mrs. Titelman's Right to Due Process.

The Court's order of January 30, 2006 constitutes state action under the law. "The action of state courts in imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to defend, has, of course, long been regarded as a denial of the due process of law guaranteed by the Fourteenth Amendment." *Shelley v. Kraemer*, 334 U.S. 1, 16 (1948). *Moreover, "[f]or m*ore than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified, *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972).

The final decision in January 2006, effectively terminating Petitioner's parental rights, expressly adopted the preceding "temporary" decision issued five years earlier, after the Sept. 20, 2000 *ex parte* hearing, which was held without Petitioner and with only one day's notice to her. While the *ex parte* hearing (and the subsequent "agreement" to temporarily abstain from visits pending a full hearing) ostensibly did not permanently adjudicate Petitioner's parental rights, the court's refusal to then hold a hearing on the matter for five years, essentially did the same thing. This Court has repeatedly affirmed that a parent's right to a relationship with their children is among the most fundamental liberties protected by the Constitution. *Troxel v Granville*, 530 U.S. 57, 65-66 (2000); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923). To deny a parent all access to her children for five years without any hearing is a profound deprivation of procedural due process. *Stanley v. Illinois*, 405 U.S. 645 (1972); *Lassiter v. Dep't of Social Services*, 452 U.S. 18 (1981).

This Court has not previously held that an indefinite deprivation of all access to one's children constitutes an infringement of a parent's fundamental right to parent her children. However, in *Fuentes v. Shevin, supra*, the Court held that even a deprivation of property could not be inflicted *ex parte* without prior notice and opportunity for hearing. The facts of this case, which, as Amici Curiae note, are far from unique, demonstrate that even a "temporary" deprivation is, in some circumstances, sufficiently severe as to be the equivalent of a permanent deprivation. This Court should grant certiorari to set a minimal standard of fairness in custody/visitation adjudications and to ensure that parents cannot be deprived of all access to their children for years at a time without adequate notice and a fair hearing.

II. The Court's 2006 Order Depriving Petitioner of any Access to her Children without a Finding of Unfitness Constituted a *De Facto* Termination of Parental Rights without Clear and Convincing Evidence of Unfitness.

The trial court's order of January 30, 2006 unconstitutionally prohibits Mrs. Titelman from having any contact with her daughters. This order constituted a *de facto* termination of Mrs. Titelman's parental rights without due process of law. In particular, between September, 2000 and January, 2006, the lower court prevented Mrs. Titelman from visiting with her minor children under the aegis of a 'temporary' order issued as a result of an *ex parte* hearing held on September 20, 2000. During these five and a half years, the court failed to conduct any final hearing, failed to apply the 'clear and convincing evidence' legal standard, and failed to make any findings of fact or conclusions of law, as required by federal and Georgia state law when parental rights are

terminated. As a result, the court effectively and unlawfully terminated Mrs. Titelman's parental rights in her natural children.

The constitutional right to parent children is well settled under current case law. In its recent decision in *Troxel v Granville*, 530 U.S. 57, 65-66 (2000), this Court stated:

> The liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 67 L. Ed. 1042, 43 S. Ct. 625 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535, 69 L. Ed. 1070, 45 S. Ct. 571 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." . . . We returned to the subject in *Prince v. Massachusetts*, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children.

Accordingly, this Court has also held that no State may deprive a parent of parental rights without a finding by clear and convincing evidence that the parent is unfit. *Santosky v. Kramer*, 455 U.S. 745, 769-770 (1982).

The court below made no finding that Mrs. Titelman was unfit by clear and convincing evidence as

required by *Santosky*. In the January 30, 2006 order, the court stated only that it is:

> distrustful of Defendant; the Court is in fear for the safety and wellbeing of the Children with regard to the conduct of Defendant; the court is in fear that Defendant would, in violation of any Order issued by the Court, again remove the Children from the jurisdiction of the Court.

Indeed, the court never even adjudicated the allegations of sexual abuse; being content to merely state that it would "never know" (App., 54a).

However, Mrs. Titelman did not "remove" the children from the jurisdiction of the Court by her previous actions. She sought protection for her daughters when they visited her, and she had a well-founded belief that the Respondent was harming them. Even if Mrs. Titelman made judgment errors, she is entitled fundamental fairness in the proceedings and she does not forfeit her constitutional right to parent her children. As this Court has stated:

> The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy

> weakened familial bonds, it must provide the parents with fundamentally fair procedures.

Santosky v. Kramer, 455 U.S. 745, 753-754 (1982). The trial court failed to make any findings to comport with the constitutionally required standard adopted in *Santosky*.

Finally, while a denial of custody and any visitation may be technically distinguished from the legal termination of parental rights at issue in *Santosky*, such a distinction would place semantics over actual meaning. In this "visitation" adjudication, the court has completely terminated Mrs. Titelman's relationship with her children and made it impossible for her to regain contact. Regardless of who initiated the legal proceedings, the State has emphatically "closed the gate" against any contact between mother and daughters. This deprivation is permanent, so long as the children are minors, because the court's condition for re-opening the case cannot be met because of the indigence of the petitioner.

This Court should grant certiorari to establish that even in private custody/visitation litigation, a functional termination of parental rights implicates the protections of the Fourteenth Amendment and requires a finding of unfitness.

III. The Imposition of a Prohibitive Monetary Requirement on an Indigent as a Predicate for Seeking a Hearing on her Parental Rights Violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

The decision of the trial court in this case that Mrs. Titelman must, in spite of her indigence, deposit $10,000 and obtain a cash bond of $500,000 before any further proceedings regarding her right to see her children would

be held, (in part as punishment for her actions in Mississippi), violates the First, Fifth, and Fourteenth Amendment of the Constitution.

Specifically, the Georgia Superior Court violated Mrs. Titelman's right to due process when it ordered the Petitioner, who is indigent, to post a five hundred thousand dollar bond and pay ten thousand dollars into the court registry as a precondition for the possibility of contact with her daughters. If Mrs. Titelman met the conditions set out by the Court, the court would then "set a hearing on the sufficiency of the bond" and initiate other legal proceedings that might possibly lead to eventual contact between Mrs. Titelman and Jennifer and Alexandra. Of course, Mrs. Titelman was unable to meet such excessive monetary requirements, as the court was well aware.

Mrs. Titelman's affidavit and financial records were submitted to the Court and a hearing was held on June 2, 2006, on the issue of indigency. However, the Court refused to rule and stated that it had no authority to make a finding. (App., 35a-48a) The following month, during a hearing on July 21, 2006, the trial court acknowledged Mrs. Titelman's indigence and stated, "[Mrs. Titelman] is a middle-aged woman and she has basically got nothing at all, . . . has no financial means, . . You don't have a pot to you know what in because you have told me you have got nothing... You don't have anything at all. You don't have any money. . .." The Court thus imposed prohibitive financial requisites on Mrs. Titelman's access to Alexandra and Jennifer even while acknowledging her inability to meet the requirements it imposed.

The trial Court, in justifying the amount of the bond it set, called Mrs. Titelman's attorneys and many supporters "kamikazes" and stated that such a high bond

was necessary in order to "keep [them] up in the sky." (App., 47a-62a)

This Court has held unconstitutional a monetary requirement for transcripts that effectively blocked a litigant's access to appellate review of a termination of parental rights. In *M.L.B. v. S.L.J.*, 519 U.S. 102, (1996), the Court found that, "...Mississippi may not deny *M. L. B.*, because of her poverty, appellate review of the sufficiency of the evidence on which the trial court found her unfit to remain a parent." This Court has also specifically outlawed filing fees for divorce which make access to divorce less available to indigents. *Boddie v. Connecticut*, 401 U.S. 371 (1971) (holding that state monopolization of the mechanism for divorce makes access to the court a due process requirement). See also *Little v. Streater*, 452 U.S. 1 (1981) (State must pay for blood grouping tests where indigent contests paternity).

The trial court's requirements in this case, that Mrs. Titelman must produce tens of thousands of dollars before she could seek further judicial consideration of her rights to her children, have the predictable effect of keeping her out of court. While not specifically a "filing fee," such monetary requirements were actually far worse, because of their excessiveness and arbitrariness. To financially bar access to the court in connection with such a fundamental right as a parent's access to their children surely violates the procedural due process and equal protection clauses of the Fourteenth Amendment. *Boddie*, supra.

While this factual scenario may appear unusual or aberrational, prohibitive monetary requirements which deny parent's access to justice are not uncommon in family courts around the country. A decision by this Court establishing some minimal standards of fairness for such

bonds and fees would go a long way to improving justice for parents.

IV. Punishment By Termination Of All Contact With Her Children Based On Acts Of Good Faith Allegations And Reasonable Belief Supported By Facts That Her Children Are Victims Of Child Abuse Violated Her Constitutionally Protected Rights Under The First, Fifth and Fourteenth Amendments.

Parents must be free to pursue action they believe protects their children without fear of punitive consequences such as the loss of contact with their children as happened in this case. There is a mounting and alarming body of research and literature that reveal a serious level of skepticism in family courts across the country when it comes to claims of child sexual abuse and domestic violence. Studies reveal that when a parent makes good faith allegations of abuse, there is a good chance of losing custody to the alleged abuser. Consequently, parents are being silenced by fear and not reporting their children's abuse.

A study by Stahly, Krajewski, Loya, Uppal, German, Farris, Hilson, and Valentine published in 2004, *Protective mothers in child custody disputes: A study of judicial abuse*, shows that 83% of protective parents lost custody after reporting abuse; most protective parents lost custody in emergency *ex parte* proceedings; 65% reported that they were threatened with sanctions if they "talked publicly" about the case; 87% of the protective parents believe that their children are still being abused; 63% have stopped reporting the abuse for fear that contact with their children will be terminated; 11% of the children were reported to have attempted suicide. Stahly, G. B.,

Krajewski, L., Loya, B. Uppal, K., German, G., Farris, W., Hilson, N., & Valentine, J. (2004), *Protective mothers in child custody disputes: A study of judicial abuse.* See also, Neustein, A., & Goetting, A. (1999), Judicial Responses to Protective Parents, *Journal of Child Sexual Abuse*, 4, 103-122; American Psychological Association (1996), *Report of the American Psychological Association presidential task force on violence and the family*, Washington, DC; Dalton, C. (1999), When paradigms collide: Protecting battered parents and their children in the family court system, *Family & Conciliation Courts Review, 37*(3), 273-296; Keenan, L. (1985), Domestic violence and custody litigation: The need for statutory reform, *Hofstra Law Review, 13*, 407-441; Myers, John E. B. (1997), *A Mother's Nightmare - Incest: A Practical Legal Guide for Parents and Professionals*, Thousand Oaks, CA, Sage; Silverman, J. G., Mesh, C. M., Cuthbert, C. V., Slote, K., & Bancroft, L. (2004), Child custody determinations in cases involving intimate partner violence: a human rights analysis, *Am J Public Health, 94* (6), 951-957.

Just as Mrs. Titelman experienced devastating serious consequences as a result of reporting her children's disclosures of sexual abuse and her attempt to protect them, many other parents are suffering the same outcome. In 1995 Faller and DeVoe found over 18% of parents who raised issues of sexual abuse experienced negative sanctions including being jailed, losing custody to the alleged offender, limitation or loss of visitation, admonitions not to report alleged abuse again to the court, protective services or the police, and prohibitions against taking the child to a physician or therapist because of concerns about sexual abuse in the future.

Faller and DeVoe also found that these sanctioned cases scored higher on a composite scale of likelihood of

sexual abuse, and were more likely to have medical evidence than cases without sanctions. Faller, K. C., & DeVoe, E. (1995), Allegations of sexual abuse in divorce, *Journal of Child Sexual Abuse*, 4(4), 1-25. Therefore, the current trend in custody cases involving allegations of abuse has a chilling effect on the reporting of the abuse.

Furthermore, all 50 of the Unites States of America have statutes requiring mandatory reporting of child abuse and neglect. Thirty states do not list a parent or family member as a mandated reporter. However, in all 50 states, the law does provide for the removal of the children from an unsafe home and termination of parental rights if the risk of harm persists. Additionally, parents may be charged criminally and civilly for failure to protect their children from abuse.

In Mississippi, where Mrs. Titelman had moved and when she lost all contact with her daughters, her penalty for failure to report her reasonable belief that her children were sexually abused (as a mandated reporter) would have been a fine up to $5,000 and/or jail not to exceed one year. *Miss. Code Ann. § 43-21-353(7).* Dr. Donald Matherne believed the children to be sexually and emotionally abused and he reported this to protective services as required.

However, the punishment Mrs. Titelman has suffered for lawfully seeking protection of her children is far greater than any punitive action anywhere in the country for mandated reporters who knowingly allow a child to remain in an abusive situation and say nothing. Moreover, parents have a vested interest in the welfare of their children, yet are finding that the family court wields a double-edged sword that may sever their relationship with their children no matter what they do. Research shows in

every state, parents who make allegations of intrafamilial abuse and report the abuse and/or seek protection of their children stand an increased chance of losing custody to the abuser. Stahly, Id.

A state court's action that silences a protective parent makes it impossible for that parent to protect her children and therefore violates the First, Fifth and Fourteenth Amendments. This Court is the only court that can provide redress for these egregious violations of constitutional rights and provide a remedy that allows parents to act upon a reasonable belief that their children are victims of abuse, when that abuse occurs in the home.

In this case, Mrs. Titelman suffered the ultimate consequence of the loss of her children for reporting their abuse to the Mississippi authorities. Anyone remotely aware of this outcome, and others like it, would heed its lesson about reporting child abuse in a domestic relations case. This Court's ruling on this monumental issue will end the no-win situation in which protective parents find themselves when making decisions such as those faced by Mrs. Titelman. Given the current situation in the family court system, only this Court's ruling can remove the loss of contact, custody, or visitation with children as a potential consequence for reasonable action taken by a party in response to a report of child abuse.

CONCLUSION

Petitioner respectfully prays that this Court grant the Petitioner's Writ of Certiorari and review the findings of the Court below.

Respectfully submitted,

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